No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

CLARA BELLE HENNING, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

CITATIONS

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on September 4, 1951.

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 26) is reported at 93 F. Supp. 380. The opinion of the United States Court of Appeals for the First Circuit (R. 42) is reported at 191 F. 2d 588.

JURISDICTION

The judgment of the Court of Appeals was entered on September 4, 1951 (R. 50). The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether Section 602 of the National Service Life Insurance Act, which, at the time the policy here involved matured, conditioned the right to receive payments upon a beneficiary "being alive to receive such payments" and provided that "No installments of such insurance shall be paid to the heirs or legal representatives as such * * * of any beneficiary", precluded the payment of any installments of such insurance to the representative of a deceased beneficiary who survived the insured but had not received any payments at the time of his own death.

2. Whether, under Section 602(h)(3)(C) of the National Service Life Insurance Act, which provides that only a parent "who last bore that relationship" is eligible as a statutory beneficiary, both the natural mother and stepmother of an insured may qualify as statutory beneficiaries, notwithstanding the fact that the stepmother who had stood *in loco parentis* to the insured was the maternal parent who "last bore" that relationship to him.

3. Whether the National Service Life Insurance Act permitted a beneficiary to elect a refund life income mode of payment at the time the policy in question matured, and, if so, whether such right of election was limited to the designated beneficiary or devolved to the beneficiary "first receiving payment."

STATUTES INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940, 54 Stat. 1008, as amended by the Act of July 11, 1942, 56 Stat. 657, the Act of September 30, 1944, 58 Stat. 762, and the Act of August 1, 1946, 60 Stat. 781, 38 U.S.C. 801, *et seq.*; and Section 3 of the Servicemen's Indemnity Act of 1951, Public Law 23, 82nd Cong., 1st Sess., Chapter 39, effective April 25, 1951, are set forth in the Appendix, *infra,* pp. 19-23.

STATEMENT

Eugene C. Henning, while in the naval service of the United States, was granted a $10,000 policy of National Service Life Insurance, effective December 1, 1942. On July 4, 1945, the date of the insured's death, Otto F. Henning, father of the insured, was the designated beneficiary (R. 24). Five months later, the father died, without having filed any claim for insurance benefits (R. 24). Thereafter, Clara Belle Henning, the natural mother of the insured, and Bessie M. Henning, the stepmother of the insured, each filed claims with the Veterans Administration for the insurance proceeds (R. 24-25). The natural mother contended that she was entitled to the proceeds as the statutory beneficiary within the meaning of Section 602(h)(3)(C) of the Act (Appendix, p. 20) which provides that any installments of insurance remaining unpaid at the death of a beneficiary shall be payable, "if no widow, widower, or child, to the parent or parents of the insured who last bore that

relationship, if living." The stepmother alleged that since Section 601(f) (Appendix, pp. 21-22) [38 U.S.C. 801(f)] of the Act provided that the term "parent" included "persons who have stood *in loco parentis* to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year," she was the proper statutory beneficiary as she had stood *in loco parentis* to the insured for a period of not less than one year prior to his entry into active service and was thus the parent "who last bore that relationship" within the meaning of Section 602(h)(3)(C). The Veterans Administration determined that Bessie M. Henning, the stepmother, had stood *in loco parentis* to the insured prior to his entry into active military service, that she was thus the last person to bear the relationship of mother to the insured and, as such, was entitled to the insurance benefits (R. 25).

Following final administrative disallowance of her claim (R. 25), the natural mother, Clara Belle Henning, instituted this action in the United States District Court for the District of Massachusetts, as authorized by Section 17 of the Act (38 U.S.C. 817), to recover the insurance proceeds (R. 5). The stepmother was joined as an additional party defendant (R. 10-11). On June 30, 1949, before the trial of the action, the stepmother died (R. 15-16) and her administrator was continued as a defendant (R. 23).

The District Court held that the insured left

surviving him three persons, each of whom was a parent within the meaning of Section 601(f) (38 U.S.C. 801(f)), *i.e.*, the natural father, Otto Henning, the natural mother, Clara Belle Henning, and the stepmother, Bessie M. Henning (R. 29-30). In making this finding, the court ruled that one who is a natural parent continues to be a parent for statutory purposes as well as others and, "such a person is a parent 'first', 'last' and all the time" (R. 29-30). The court further held that the critical point in determining whether or not a beneficiary or the representative of a deceased beneficiary is entitled to receive insurance benefits depends upon whether the beneficiary was alive on the date payment was due, as distinguished from the date payment was made. In awarding the insurance proceeds, the court held that because Otto Henning, the designated beneficiary, survived the insured, the representative of his estate[1] was entitled to those payments falling due from July 4, 1945 (the date of the insured's death) to December 8, 1945 (the date of the father's death); that those payments falling due from December 9, 1945, to June 30, 1949, the date of death of Bessie M. Henning (the stepmother), should be paid equally to the representative of the estate of Bessie M. Henning

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[1] On the date the District Court's memorandum opinion was rendered, October 17, 1950, no administrator of the estate of Otto Henning had been appointed. On April 16, 1951, the court of appeals permitted the administrator of the estate to be added as a party defendant-appellee (R. 41-42).

and to Clara Belle Henning (the natural mother); and that those payments falling due subsequent to July 1, 1949, should be paid to Clara Belle Henning (R. 30). The judgment, entered on January 12, 1951 (R. 31-33), pursuant to the court's opinion, additionally specified that payments, as above stated, should be made in 120 installments of $83 1/3 each (the face value of the policy divided by 120), without any election as to mode of payment on the part of the beneficiaries.

On appeal, the Court of Appeals for the First Circuit reversed as to the method of computation of the monthly payments but affirmed the remainder of the findings and conclusions of the trial court, including the finding that the beneficiary was not entitled to elect as to the mode of payment (R. 41-50).

REASONS FOR GRANTING THE WRIT

1. The National Service Life Insurance Act of 1940, as amended, clearly and unequivocally provides that a beneficiary is entitled to only such installments as are paid to him during his life, irrespective of when payment became due under the terms of the policy. Section 602(i) [38 U.S.C. 802(i)] specifically declares that:

> * * * The right of any beneficiary to payment of any installments shall be conditioned upon his or her *being alive to receive such payments.* No person shall have a vested right *to any installment or installments of any such*

> *insurance and any installments not paid to a beneficiary during such beneficiary's lifetime* shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority * * *. [Italics supplied.]

Section 602(j) [38 U.S.C. 802(j)] directly prohibits the payment of any such installments to the estate of the beneficiary, as such. It provides that:

> No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made.

Under the provisions of these sections of the Act, no rights are conferred on a beneficiary with respect to installments which fall due, but are not paid to the beneficiary, during his lifetime, and such installments do not inure to the beneficiary's estate upon the latter's death.

Despite the plain language of these two sections, the court of appeals and the trial court relied on the reasoning and decision of *Baumet* v. *United States*, 177 F.2d 806 (C.A. 2) (reversing 81 F. Supp. 1012 (S.D.N.Y.)), certiorari denied, 339 U.S. 923, and held that the critical point in determining whether the beneficiary or his representative is entitled to take is whether the beneficiary was alive on the date payment was due. In the *Baumet* case, the court of appeals quoted but one

sentence from Section 602(i), *viz.*, "The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments" and construed that sentence by placing undue emphasis on the words "alive to receive" so as to infer they mean "ready to receive". The court, however, ignored the very following sentence, which clearly indicates that such a construction is erroneous: "No person shall have a vested right to any installment or installments of any such insurance and any installments *not paid to a beneficiary during such beneficiary's lifetime* shall be paid to a beneficiary or beneficiaries within the permitted class next entitled to priority * * *" (italics supplied). The court in the *Baumet* case overlooked this language and held that "the right to those installments [falling due subsequent to the insured's death and prior to the beneficiary's death] became vested in him [the beneficiary]" and directed payment to the beneficiary's estate, even though the next Section, 602(j), declares: "No installments of such insurance shall be paid to the heirs or legal representatives as such * * * of any beneficiary * * *."

The plain language of these two sections, read as a whole, is sufficient to foreclose the construction suggested in the *Baumet* case and adopted by the court in the instant case. Even if the language of the statute were not clear, reference to its legislative history and to prior and subsequent acts of

Congress clearly confirms the interpretation urged by the Government.

In enacting the National Service Life Insurance Act of 1940, the draftsmen had the benefit of the experience and model of the World War Veterans' Act of 1924, 43 Stat. 607. That Act provided that accrued installments of insurance unpaid at the time of the death of the beneficiary would be paid to the beneficiary's personal representatives (Section 26, 38 U.S.C. 451), while the present value of all installments not yet due should accrue to the estate of the insured (Section 303, 38 U.S.C. 514). The effect of the 1924 Act, therefore, was to provide a clear and precise statutory scheme whereby installments accrued, but unpaid, during the lifetime of the beneficiary, became part of the latter's estate. *McCullough* v. *Smith*, 293 U.S. 228, *Singleton* v. *Cheek*, 284 U.S. 493; cf. *Baumet* v. *United States*, 81 F.Supp. 1012 (S.D.N.Y.), reversed, 177 F.2d 806 (C.A. 2). By omission of any similar provision in the National Service Life Insurance Act of 1940, and by the clear language of 38 U.S.C. 802 (i) and (j), Congress manifested its intention that benefits, so far as insurance maturing prior to August 1, 1946 is concerned, should be paid only to living beneficiaries.

The Act of August 1, 1946 (60 Stat. 781), amended the National Service Life Insurance Act by adding to Section 602 subsections (t) and (u), which made insurance benefits payable to the estates of deceased beneficiaries in certain instances

and to the estates of deceased insureds in other instances. Congress thus expressly recognized that prior thereto insurance benefits were payable only to living beneficiaries, as it emphasized by the fact that it did not make the terms and provisions of the Act of August 1, 1946 retroactive, but instead amended the language of Section 602(i) and (j) by adding: "The provisions of this subsection shall not be applicable to insurance maturing on or after the date of enactment of the Insurance Act of 1946." Section 5(b), Act of August 1, 1946, 60 Stat. 781, 783. In urging the passage of subsections (t) and (u), which permitted payment of insurance proceeds to estates of deceased insureds and beneficiaries, Congressman Rankin stated:

> Under existing law, if there is no person within the permitted class of beneficiaries above specified *living to receive* payments of insurance, *no payments are made.* [Italics added.] [92 Cong. Rec. 6170.]

The 1946 amendments to the Act have been held to represent a change of policy on the part of Congress to enlarge the class of beneficiaries of policies maturing after August 1, 1946, but as retaining the restricted class of beneficiaries for policies which had previously matured. *Niewiadomski* v. *United States,* 159 F.2d 683 (C.A. 6), certiorari denied, 331 U.S. 850. As the court in the latter case pointed out, "The liberalizing effect of the amendment could have been made applicable to all policies previously issued" (159 F.2d, at 687).

The question of whether payments of proceeds of National Service Life Insurance policies can be made to the estate of deceased beneficiaries is no longer limited to policies maturing prior to August 1, 1946 (as was the case when we filed the Memorandum for the United States in *Baumet* v. *United States,* No. 331, Misc., October Term, 1949). For, on April 25, 1951, Congress enacted the Servicemen's Indemnity Act of 1951 (Public Law 23, 82nd Cong., 1st Sess.) which, in providing free life insurance in the amount of $10,000 for servicemen during the period of military service, commands (Section 3) that:

> Any installments of an indemnity not paid to a beneficiary during such beneficiary's lifetime shall be paid to the named contingent beneficiary, if any; otherwise, to the beneficiary or beneficiaries within the permitted class next entitled to priority: *Provided,* That no payment shall be made to the estate of any deceased person.

Thus, there is presented under this new statute, as well as with respect to National Service Life Insurance policies matured prior to August 1, 1946, the question of whether effect is to be given to the explicit Congressional policy of channeling benefits to living beneficiaries—rather than to the estates of dead beneficiaries. The quoted provision of the 1951 Act simply reiterates the policy set forth in Section 602(i) and (j) of the 1940 Act that a beneficiary is entitled to only such installments as are

actually paid to him during his lifetime. The ruling of the court below and of the *Baumet* case is, therefore, now of sufficient importance to call for review by this court.

At least four district court decisions, in well reasoned opinions, have specifically denied payment of proceeds of insurance to the estates of deceased beneficiaries. *Washburn* v. *United States*, 63 F. Supp. 224 (W.D. Mo.); *Carpenter* v. *United States*, 72 F. Supp. 510 (W.D. Pa.), reversed on other grounds, 168 F.2d 369 (C.A. 3); *Baumet* v. *United States*, 81 F. Supp. 1012 (S.D.N.Y.), reversed, 177 F.2d 806 (C.A. 2); *Brackeen* v. *United States*, N.D. Texas (July 26, 1951).[2] Moreover, the consistent administrative construction, presumably known to Congress, has been to deny such payments, a practice which has controlled the settlement of many claims. This administrative practice is itself entitled to great weight and should not be overturned except for the most compelling reasons. *United States* v. *Citizens Loan & Trust Co.*, 316 U.S. 209; *United States* v. *Madigan*, 300 U.S. 500; *United States* v. *Jackson*, 280 U.S. 183.

2. Where the designated beneficiary under a National Service Life Insurance policy is not

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[2] In the latter case, the District Court held:

That Bonnie Mae Gayler having died subsequent to the death of the insured, but without having filed any claim for the subject insurance, neither she nor her estate is entitled to the proceeds thereof in virtue of the express limitations contained in 38 U.S.C.A., Sec. 802(i).

eligible to receive the proceeds of the policy, such proceeds are payable as provided by Section 602 (h), 38 U.S.C. 802(h). Subsection (3)(C) of that Section provides that payment shall be made:

> if no widow, widower, or child, to the parent or parents of the insured who last bore that relationship, if living, in equal shares * * *.

The court below took the position that the natural mother of the insured is the insured's mother "'first,' 'last' and all the time for statutory as well as for other purposes" (R. 48), so that she was entitled to share in the proceeds of the policy equally with the stepmother of the insured, notwithstanding that the stepmother was the mother *in loco parentis* "who last bore that relationship" to the insured[3] within the meaning of Section 602(h)(3)(C).

This holding presents a direct conflict with the decision of the Court of Appeals for the Second Circuit in *Baumet* v. *United States*, 191 F.2d 194. In the latter case, the Court of Appeals stated that the right of a stepfather who was found to stand *in loco parentis* to the insured is superior to that of the natural father and excludes the natural father from all rights to proceeds. The court said at pp. 196-197:

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[3] Section 601(f) (38 U.S.C. 801(f)), at the date of the insured's death, defined the terms "parent," "father," and "mother" as including "* * * persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year."

> The insured can have but one maternal parent and one paternal parent. Since Section 801 (f) recognizes a person *in loco parentis* as a parent, the parents of William Baumet, Jr., at the time of his enlistment were Julie Peters, his foster mother, and John Peters, his foster father. Hence John Peters was the paternal parent who last bore that relationship to the insured, and the appellant cannot satisfy the statutory requirement. If Henning v. United States, D.C. D. Mass., 93 F. Supp. 380, holds the contrary we respectfully disagree with it.

The decision by the court below is also in conflict with the conclusion reached by the Tenth Circuit Court of Appeals in *Leyerly* v. *United States*, 162 F.2d 79, that a parent *in loco parentis* is entitled to receive the proceeds of a policy in place of a natural parent if the former was the parent "who last bore that relationship."

The legislative history of the amendment which added the words *"who last bore that relationship"* to Section 602(h)(3)(C) supports the contention of the Government that Congress intended benefits of insurance passed by devolution to be payable only to the one mother or father "who last bore that relationship." The italicized words were added by Section 9 of the Act of July 11, 1942 (56 Stat. 657) as the result of a committee amendment in the Senate concurred in by the Administrator of Veterans Affairs. In explanation thereof, on the floor of the House, Congressman Disney of Oklahoma, the floor manager of the legislation, stated:

> In the Senate there was added to the bill four amendments * * * The first two of these amendments are only clarifications * * *. The third amendment places the parent who last bore that relationship precedence over other parents; in other words, a person who stood in the relationship of loco parentis to the soldier for not less than a year immediately prior to his entrance into the active service would take precedence over a natural parent. [88 Cong. Rec. 5932.] [4]

Additional support is given our construction by the Servicemen's Indemnity Act of 1951. Section 3 of that Act (Appendix, pp. 22-23) provides that "unless designated otherwise by the insured, the term 'parent' shall include only the mother and father who last bore that relationship to the insured." As originally reported to the House, Section 3 permitted payment to more than two parents, all of whom might share in the indemnity at the same time.[5] When the bill reached the Senate Com-

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[4] See also S. Rep. 1430, 77th Cong., 2d sess., which supports the above intention.

[5] Section 3 of H.R. 9911, 81st Cong., 2d sess., which subsequently became Section 3 of the Servicemen's Indemnity Act of 1951, reads:

> * * * The insured shall have the right to designate the beneficiary or beneficiaries of the indemnity within the classes herein provided; to designate the proportion of the principal amount to be paid to each; and to change the beneficiary or beneficiaries without the consent thereof but only within the classes herein provided. If the designated beneficiary or beneficiaries do not survive the insured, or if none has been designated, the Administrator shall make payment of the indemnity to the first

mittee on Finance, Section 3 was amended by the addition of the stipulation that "the term 'parent' shall include only the mother and father who last bore that relationship to the insured."[6] The conclusion is clear that Congress elected a policy of limiting payments under the Act to one paternal parent and one maternal parent.

3. The Court of Appeals also held that the proceeds under the policy must be paid in monthly

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eligible class of beneficiaries according to the order set forth above, and in equal shares if the class is composed of more than one person.

[6] The Administrator of Veterans Affairs sent a letter to the House and Senate Committees expressing his views on the proposed legislation. See Sen. Rep. No. 91, 82nd Cong., 1st Sess., P. 12; H. Rep. No. 6, 82nd Cong., 1st Sess., P. 14. In relation to the provisions originally in Section 3, the Administrator stated:

> It should be noted that an individual may have more than two parents, as that term is defined by the bill, all of whom might share the indemnity at the same time. Thus, adoptive parents who reared a child from infancy would have to share the Government's bounty equally with the natural parents who abandoned the child or with parents who stood in loco parentis for any period however short. Under the National Service Life Insurance Act, insurance is payable only to the parent or parents who last bore that relationship to the insured unless some other parent is designated as beneficiary by the insured. Gratuitous insurance under the mentioned act is payable to a parent only if dependent at the time of death of the insured, and is not payable in any case to a brother or sister. In fact, this provision is a radical departure from all of the existing veterans' laws authorizing gratuitous benefits, insofar as it includes as direct beneficiaries nondependent parents and the new group of brothers and sisters, without regard to dependency.

installments (with 120 months certain) in an amount determined by the age of the first beneficiary at the death of the insured. In so doing, the court erroneously (1) deprived the beneficiary of the valuable right to elect to receive a refund life income which in many instances will yield greater total benefits, and (2) held that this right of election accrued to the first-named beneficiary, rather than to the beneficiary who first *received* payment under the policy.

By the Act of September 30, 1944 (58 Stat. 762), Congress amended Section 602(h)(1) and (2) to authorize the Administrator to provide that a beneficiary may elect a refund life income in lieu of the previously defined modes of payment.[7] By regulations issued in 1944 (38 C.F.R., 1944 Supp., sec. 10.3475), the Administrator in effect inserted this option in every policy under which payments had not commenced prior to September 30, 1944. The option was thus clearly in effect at the date of the insured's death on July 4, 1945. It is to be noted that the apparent basis for this portion of the decision below was the mistaken assumption that Section 602(h)(1) and (2) had not been amended until 1946, after the death of the insured in this case.

[7] Prior to the 1944 amendments, if the beneficiary was under thirty years of age at the time of maturity, payment was in two hundred and forty equal monthly installments; if thirty or over, payment was in one hundred and twenty monthly installments certain, with such payments continuing during the remaining lifetime of such beneficiary. See Appendix, p. 19.

By the regulations which both the original Act and the 1944 amendments empowered the Administrator to make, it was provided that the right to elect to receive a refund life income should be "available only to the beneficiary first receiving payment" (38 C.F.R., 1944 Supp., Sec. 10.3479). Considering the clear Congressional purpose that payments shall be made only to living beneficiaries, it was particularly appropriate for the Administrator to provide that this valuable right of election also should devolve to the first beneficiary who survived to receive payments and that the amount of the monthly installments should be determined by the age of such beneficiary, rather than by the age of a deceased prior beneficiary who had never received payments under the policy.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General

DECEMBER 1951.

APPENDIX

1. The pertinent portions of Sections 602 (h), (i), and (j) of the National Service Life Insurance Act of 1940, 54 Stat. 1008, as amended by the Act of July 11, 1942, 56 Stat. 657, the Act of September 30, 1944, 58 Stat. 762, and by the Act of August 1, 1946, 60 Stat. 781, 38 U.S.C. 802, provide as follows:

(h) Insurance maturing prior to the date of enactment of the Insurance Act of 1946 shall be payable in the following manner:

"(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: * * *.

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months

certain, with such payments continuing during the remaining lifetime of such beneficiary: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount, as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: * * *.

(3) Any installments certain of insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order—* * *.

(C) if no widow, widower, or child, to the parent or parents of the insured who last bore that relationship, if living, in equal shares; * * *."

(i) If no beneficiary is designated by the insured or if the designated beneficiary does not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (h) (3) of this section and the

insurance shall be payable in equal monthly installments in accordance with subsection (h) (1) or (2), as the case may be. The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h). The provisions of this subsection shall not be applicable to insurance maturing on or after the date of enactment of the Insurance Act of 1946.

(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made, * * *. The provisions of this subsection shall not be applicable to insurance maturing on or after the date of enactment of the Insurance Act of 1946.

2. Section 601(f) of the National Service Life Insurance Act of 1940, as of the date of the insured's death on July 4, 1945, 54 Stat. 1008, as amended by the Act of July 11, 1942, 56 Stat. 657, provided as follows:

(f) The terms "parent", "father", and "mother" include a father, mother, father

through adoption, mother through adoption, and persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year.

3. Section 3 of the Servicemen's Indemnity Act of 1951 (Public Law 23, 82nd Cong., 1st Sess., Chapter 39, effective April 25, 1951), provides as follows:

> Sec. 3. Upon certification by the Secretary of the service department concerned of the death of any person deemed to have been automatically insured under this part, the Administrator of Veterans' Affairs shall cause the indemnity to be paid as provided in section 4 only to the surviving spouse, child or children (including a stepchild, adopted child, or an illegitimate child if the latter was designated as beneficiary by the insured), parent (including a stepparent, parent by adoption, or person who stood in loco parentis to the insured at any time prior to entry into the active service for a period of not less than one year), brother, or sister of the insured, including those of the half-blood and those through adoption. The insured shall have the right to designate the beneficiary or beneficiaries of the indemnity within the classes herein provided; to designate the proportion of the principal amount to be paid to each; and to change the beneficiary or beneficiaries without the consent thereof but only within the classes herein provided. If the designated beneficiary or beneficiaries do not survive the insured, or if none has been

designated, the Administrator shall make payment of the indemnity to the first eligible class of beneficiaries according to the order set forth above, and in equal shares if the class is composed of more than one person. Unless designated otherwise by the insured, the term "parent" shall include only the mother and father who last bore that relationship to the insured.

Any installments of an indemnity not paid to a beneficiary during such beneficiary's lifetime shall be paid to the named contingent beneficiary, if any; otherwise, to the beneficiary or beneficiaries within the permitted class next entitled to priority: *Provided,* That no payment shall be made to the estate of any deceased person.

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